No. 43938-7-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

PHILIP BRENT PLATTNER, as Trustee of the Philip Brent Plattner Trust,

Appellant,

vs.

ROBERT K. BONNETT and JANET A. BONNETT, husband and wife,

Respondents.

BRIEF OF RESPONDENTS

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This appeal arises from a dispute between neighboring property owners on Harstine Island. Starting shortly after his purchase of its property at issue in this lawsuit, Philip Plattner, trustee of Appellant Philip Brent Plattner Trust ("Plattner"), accused Respondents Robert and Jan Bonnett of innumerable easement violations, trespasses, interferences, personal threats, and various other (usually imaginary) transgressions. Plattner ultimately filed the underlying lawsuit seeking primarily equitable and declaratory relief from the trial court. The Bonnetts sought equitable and declaratory relief of their own to protect themselves from Plattner's frequently irrational and disturbing behavior. Following trial, the trial court ruled for the Bonnetts on almost all of the dozen or so issues before it. Plattner now files this appeal seeking reversal of the trial court's decision on some of its rulings.

I. STATEMENT OF THE CASE

Plattner filed the Complaint in this matter on September 23, 2008, and subsequently amended it twice.[1] By the time of the May 17, 2011 trial, Plattner alleged nine different claims seeking damages and/ or injunctive and declaratory relief.[2] The Bonnetts in turn alleged three counterclaims for declaratory and equitable relief related to

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[1] CP 419-23, 406-12, 398-405.

[2] CP 398-405.

easement rights and seeking to enjoin certain inflammatory, damaging, and/or disturbing behavior by Plattner.[3]

A discussion here of all of the causes of action in this case and their resolution is not necessary given the limited nature of Plattner's appeal. Accordingly, the Bonnetts focus their Statement of the Case on findings and evidence pertinent to Plattner's appeal.

A. The Driveway Easement

On September 22, 1993 the two lots now owned by the Bonnetts and Plattner were created by the short subdivision of a larger lot.[4] As part of this short subdivision, a 30-foot easement for ingress, egress, drainage and utility purposes was created on Lot 2 of the shortplat.[5] At that time, a primitive single-lane gravel road roughly eight-feet wide that the then-owner, John McCrory, deemed "adequate" accessed the two lots.[6]

On June 16, 2004, Mr. McCrory sold Lot 2 of the shortplat to the Bonnetts.[7] As part of the sale, a Road Relocation Agreement was recorded as part of Exhibit B to the statutory warranty deed.[8] This

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[3] CP 391-96.

[4] FF 3 (CP 70). Ex. 1.

[5] *Id.*

[6] RP 410. See also RP 464, 465.

[7] FF 4 (CP 70); Ex. 100.

[8] FF 4 (CP 70).

Agreement both relocated the access easement set forth in the 1993 easement and revised its dimension to the "as built" dimensions as of June 15, 2004:

> The Grantor and the Grantee hereby agree that, due to the sight distance requirements of the South Island Drive County Road and the existing access easement to Lots 1 and 2 of Short Subdivision No. 2332, said access easement shall be relocated in a Northwesterly direction. This easement relocation will be completed by June 15, 2004. The relocated easement shall equal the "as built" dimensions and location of the road to be constructed and in use by June 15, 2004. At all times the road shall provide access to both Lots 1 and 2 of Short Subdivisions 2332, and at all times shall have a sufficient road bed to allow for fire and other emergency vehicles to access both lots.[9]

Pursuant to the Road Relocation Agreement, between one-third to one-half of the original access road was relocated before the closing of the sale to the Bonnetts after obtaining a permit from the County.[10] Following the relocation, the road started on Lot 1 (now owned by Plattner) but shortly thereafter veered south and crossed onto Lot 2 (now owned by the Bonnetts); approximately a third of the distance down Lot 2 a separate road/ driveway to Lot 1 split off immediately before the western end of the easement.[11] The width of the road bed

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[9] *Id.* Ex. 100.

[10] FF 8 (CP 71); RP 466. In his brief Plattner repeatedly refers to the relocated portion of the road as a small section, but this is plainly not the case.

[11] FF 8 (CP 71).

after the relocation was roughly ten feet,[12] and Mr. Bonnett testified it was his understanding that the easement was then co-extensive with the entire road.[13] Mr. McCrory testified that his attorney had drafted the as-built language and he had no idea what it meant, but it was Mr. McCrory's understanding that following the sale the easement gave him what he needed to cross Lot 1 to get to the beach on Lot 2.[14]

Following closing, the Bonnetts widened the road somewhat and paved it,[15] so that at the time of trial it was 12-feet wide.[16] They also a cleared portion of their property adjacent to the road to install their well, and later used this area to park a trailer and boat and occasional vehicles; at one point they also had a shed in that area.[17]

In November 2006 – more than two years after the Bonnetts purchased their property – Plattner purchased Lot 1.[18] The statutory warranty deed to Plattner included nearly identical language modifying the location and scope of the access easement as that set forth in the statutory warranty deed to the Bonnetts:

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[12] RP 468.

[13] RP 476-77.

[14] RP 409, 412.

[15] RP 479-80; Ex. 141.

[16] FF 8 (CP 71); RP 485.

[17] RP 513-19, 613-14.

[18] FF 6 (CP 70).

> The grantor and the Grantee hereby agree that due to the sight distance requires of the South Island Drive County Road and existing access easement to Lots 1 and 2 of Short Subdivision No. 2332, said access easement, as show and described on Lots 1 and 2 of said Short Subdivision No. 2332, was relocated in a Northwesterly direction. This easement relocation was completed on or about June 15, 2004. The relocated easement shall equal the "as built" dimensions and location of the road as constructed and now in use. At all times this road shall provide access to both Lots 1 and 2 of Short Subdivision No. 2332 and also to John A. McCrory IV for access regarding the aforementioned "SHELLFISH RESERVATION," and at all times shall have a sufficient road bed to allow for fire and other emergency vehicles to access both lots.[19]

The Bonnetts finished construction of their home in December 2006 and have resided there since.[20] Plattner started construction of a large home[21] on Lot 1 in 2008, and it remains under construction.[22] From almost the moment construction began, Plattner accused the Bonnetts of interfering with the construction of the home. Among other things, starting in January 2009, Plattner filed a total of 13 police reports with the Mason County Sheriff's Office complaining of various acts of vandalism and trespass for which he largely blamed the Bonnetts.[23] The acts complained of by Plattner in these police reports

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[19] FF 6 (CP 70) Def. Ex. 3

[20] FF 7 (CP 71).

[21] Plattner prefers to call this large home a "cabin," but it is a far cry from what most people think of as a cabin.

[22] FF 7 (CP 71).

[23] RP 332-340.

and in emails to the County and the Bonnetts included the alleged cutting of twine holding down two tarps; "messing" with a tarp; planting of ferns on Plattner's property; killing poison oak on his property; breaking of a wooden survey stake; bending of a metal fencepost; moving of a public notice sign; trespass; harassment; damages to property improvements; theft; and threats to Plattner's life.[24]

Additionally, from the moment he started construction, Plattner objected to the Bonnetts making any use of any portion of any portion of the area he claimed to be a 30-foot road and utility easement.[25] Accordingly, he protested that the Bonnetts could not park their trailer and boat in the open area adjacent to the road that had been created when the Bonnetts installed their well[26] and complained about the small shed.[27] He also complained about reflectors placed by the Bonnetts at the intersection with South Island Drive and alongside another portion of the road to prevent visitors from driving into a ditch.[28] Trying to avoid further confrontation with Plattner over the

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[24] FF 18; RP RP 332-340, 509-512. Plattner, himself a psychiatrist, admitted to a County employee that he was "having paranoid delusions because of all of this." RP 543.

[25] RP 513

[26] RP 489.

[27] RP 513-19, 613-14. Exs. 4, 5.

[28] RP 517-18.

issue, the Bonnetts stopped parking vehicles in the open area and moved (and later removed) the shed.[29]

In his Second Amended Complaint Plattner sought to quiet title to a 30-foot ingress-egress easement on the basis of grant, reasonable enjoyment, "shifting easement," or equitable relocation.[30] Plattner also asserted that he was entitled to a "balancing of the equities" to establish a 30-foot ingress-egress easement.[31] Finally, Plattner asserted that he had been damaged by the Bonnetts making improvements or placing other obstructions in the easement.[32] The Bonnetts also sought to quiet title to the easement as the road existed on the date of trial.[33]

At trial, some of Plattner's witnesses testified that several large trucks had experienced difficulties traveling onto Plattner's property without encroaching onto a non-paved segment adjacent to the curve of the road as it turned towards Plattner's property.[34] A fire truck also encountered difficulty due to the curve of the road and the placement of Plattner's logging gate.[35]

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[29] RP 513-19.
[30] CP 401.
[31] CP 402.
[32] CP 402.
[33] CP 393, 358-59.
[34] FF 9.
[35] FF 10; RP 785-86.

In its oral ruling following trial, the trial court balanced the equities and ruled that title to the road easement should be quieted so that it was 14 to 20 feet in width.[36] Following this oral ruling, the parties agreed that it would be best if the trial court issued a more precise description of where these dimensions would be reflected on the ground.[37] Months of attempts between the parties to reach agreement on what these dimensions would be followed.[38] Unfortunately, these efforts were unsuccessful, and the parties ultimately submitted additional briefing and revised proposed findings to the trial court.[39] Of particular note, Mr. Bonnett, an architect by training,[40] put his background to use and drew up a proposed site plan for the easement based on the location of the actual road and taking into account the trial court's oral ruling following trial.[41] Notably, though, this proposed site plan expanded on what the trial court had stated in its oral ruling and resulted in an easement that started at 20 feet wide at the intersection with South Island Drive, narrowed to 14 feet, expanded slightly to 16 feet around a curve, decreased back to 14 feet, and the gradually expanded **up to 30 feet** as it rounded the

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[36] RP 848.

[37] CR 305-06, CR 251.

[38] See, e.g., CP 224-225.

[39] CP 206-227, 185-190.

[40] RP 460-62.

[41] CP 155-173.

curve and accessed Plattner's property.[42] Nevertheless, despite calling the proposal a "masterful job," Plattner objected the proposal was not enough even though it was more than he himself had proposed earlier.[43] Ultimately, on June 1, 2012 – one full year after trial – the trial court adopted Findings of Fact and Conclusions of Law that largely incorporated Mr. Bonnett's diagrams, since the trial court believed they reflected the equitable outcome the court sought after reviewing the testimony and evidence presented at trial.[44]

B. The Bonnett split rail fence.

On or about February 27, 2008, Plattner constructed on his property an approximately 20-foot logging gate across the driveway on his property that branches off of the main road easement.[45] This gate was considerably wider than the width of the road/ driveway on to his property, however.[46] More importantly, a survey subsequently obtained by Plattner showed that the gate extended beyond the termination point of the road easement on the property line.[47]

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[42] *Id.*

[43] CP 107-11, 116-154.

[44] CP 68-89.

[45] FF 11 (CP 71).

[46] Ex. 106

[47] FF 11 (CP 71); RP 496; Ex. 3.

Concerned that Plattner was attempting to increase the easement rights on their property,[48] the Bonnetts eventually installed a split-rail fence and planted plants along the property line and western boundary of the easement.[49] As a result, a short portion of the split-rail fence blocked access to a portion of Plattner's 20-foot logging gate.[50]

Following trial, the Court found that Plattner's logging gate was outside of the road easement but decided, contrary to the Bonnetts' testimony, that it was in an area where the road had been used since 1992.[51] Accordingly, the trial court held that Plattner had an implied easement by prior use for ingress and egress of the area in front of his logging gate, and it ordered the removal of the Bonnetts' split rail fence.[52] But the trial court declined to hold that the split-rail fence constituted a nuisance,[53] a ruling that Plattner now challenges.

C. The Bonnetts' metal stakes.

Heavy trucks associated with Plattner's home construction sometimes carelessly drove outside of the area of the road surface

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[48] RP 498-99.

[49] FF 11 (CP 71); RP 499.

[50] FF 11 (CP 71).

[51] FF 13 (CP 72).

[52] CL 4, CPL 10(b) (CP 75-76).

[53] CL 1 (CP 75).

and caused damage to the edges of the pavement and adjacent land.[54] The Bonnetts installed short, metal stakes alongside the access road in order to encourage better driving and protect the edge of the pavement and surrounding property.[55] At the time of trial, some of these stakes remained on one side of the road.[56]

The trial court found that the stakes did not meet the statutory criteria for a nuisance[57] – a finding and conclusion that is disputed by Plattner on appeal – but it ordered the Bonnets to remove any remaining stakes.[58]

D. Plattner's video camera.

As noted by the trial court in findings that Plattner does not appeal, from about 2008 onward the parties "were not getting along."[59] As a result, the Bonnetts eventually asked Plattner not to contact them; Plattner responded that he had a right to contact them, which, as the trial court found, engendered more frustration on the part of the Bonnetts.[60] Mrs. Bonnett in particular was concerned and

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[54] RP 507, 535. Ex. 145(A), 145(B).
[55] RP 507.
[56] FF 16 (CP 72); RP 507.
[57] FF 16, CL 2 (CP 72, 75).
[58] CL 10(c) (CP 76).
[59] FF 19 (CP 73).
[60] FF 19 (CP 73); RP 494-95.

at times frightened by Plattner's behavior.[61] Indeed, after becoming increasingly alarmed by Plattner's aggressive behavior, the Bonnetts obtained a temporary protection order on March 22, 2010 that prevented Plattner from contacting Defendants.[62] The Bonnetts ultimately decided not to pursue an injunction after the order seemed to curtail Plattner's aggressive behavior in the near term.[63]

The curtailment was short-lived. In December 2010, Plattner installed a video surveillance camera and light directed towards the portion of the driveway that accessed the Bonnett's home in addition to recording a portion of the Plattner logging gate.[64] In an unchallenged finding of fact, the trial court found that there was no reason for the lights and camera on Plattner's property to be directed at the road easement unless the Bonnetts agreed.[65] As part of the same unchallenged finding, the trial court further found that there was no justification for Plattner videotaping the Bonnetts going to their own home.[66]

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[61] FF 20 (CP 73).

[62] RP 494, 640. Unfortunately, Plattner continued his bizarre behavior following trial. For example, as set forth in post-trial pleadings, Plattner posted on his property a series of disturbing signs facing the Bonnetts' property regarding the devil, terrorism, evil, and crimes. CP 277, 282-84.

[63] RP 495.

[64] FF 21.

[65] FF 22.

[66] FF 22.

During trial, Plattner introduced video-tape evidence that showed that the video camera that recorded the area of the road easement used by the Bonnetts to access their property was redirected by a pole or stick so that it no longer was pointed at the Bonnetts' property.[67] This relocation occurred a period of time after the video camera recorded Mr. Bonnett looking at it from his property.[68] Although he claimed that the video camera had been damaged by the pole or stick and claimed it was due to Mr. Bonnett, Plattner did not question either Bonnett about the incident during their testimony, and the Bonnetts did not provide any testimony regarding Plattner's video camera as part of their case.

In a finding now challenged by Plattner, the trial court found that the video camera was

> moved by a stick of some sort and inadvertently damaged. Given the burden of proof was a preponderance of the evidence and given the totality of the circumstances, the Court find that Mr. Bonnett probably moved the camera and damaged the lens. The Court further finds that Mr. Bonnett did not meant to damage the lens but was frustrated at being videotaped while going to and from his home.[69]

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[67] Ex. 197.

[68] Ex. 197.

[69] FF 23 (CP 73).

The trial court also ordered that the Bonnetts pay Plattner the $309 he claimed it cost to replace the lens,[70] a ruling that is now also challenged by Plattner.

E. The Farm Gate.

On July 12, 2010, Plattner installed a second large metal gate, this time across the road easement a short distance from South Island Drive. This "farm gate" was located on the small section of Plattner's property (Lot 1) encumbered by the relocated road easement.[71] Plattner then demanded that Defendants keep the gate closed and locked at all times, even when he and his contractors were at his property.[72] He also placed his house numbers on the southernmost fence post – i.e. the one next to the Bonnetts' property – creating confusion for those visiting the properties.[73]

Subsequently, the Bonnetts missed multiple package deliveries and had frequent problems with their guests and other visitors being unable to enter or leave their property.[74] Additionally, since Plattner installed the road gate very close to the road, whenever the Bonnetts

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[70] CL 9 (CP 75).

[71] RP 520.

[72] RP 520.

[73] RP 536-37; Ex. 147.

[74] RP 520, 522.

were towing their trailer or boat, they were forced to park across the road, cross the road, unlock and open the gate, cross back across the road, before they could drive onto their property; otherwise, their vehicle would block the road whenever they attempted to enter their property.[75] Opening and closing the gate was particularly difficult for Mrs. Bonnett, especially at the dark of night and during wet or icy weather, given certain physical limitations that many of us are blessed with as we age.[76] Accordingly, after attempting to accommodate Plaintiff's demands for five months and fed up with the inconvenience, the Bonnetts declined to continue to shut and lock the gate when they entered or left their property.[77]

In unchallenged findings, the trial court found that the farm gate was not contemplated as part of the road easement and that Mrs. Bonnett and many of the Bonnetts' visitors had difficulty operating the farm gate.[78] Accordingly, the trial court ordered Plattner to remove the gate, including the southernmost post on which he placed his house numbers.[79] Plattner appeals from this latter ruling with regards to the southernmost fence post.

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[75] RP 524-25.

[76] RP 641.

[77] RP 521-22.

[78] FF 17 (CP 72).

[79] CL 10(d) (CP 76).

II. LEGAL ARGUMENT

A. Standard of Review.

Where the trial court has weighed the evidence, appellate review is limited to determining whether substantial evidence supports its findings of fact and, if so, whether the findings support the conclusions of law.[80] Substantial evidence is that sufficient to persuade a fair-minded, rational person of the truth of the asserted premise.[81] Additionally, actions for quiet title are equitable in nature and, therefore, subject to an abuse of discretion standard.[82] Under this standard, the appellate court reviews the record to determine whether the trial judge's grant of equitable relief is based upon tenable grounds or tenable reasons.[83]

B. The relocation and modification of the road easement is valid.

"The touchstone of contract interpretation is the parties'

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[80] *Perry v. Costco Wholesale, Inc.*, 123 Wn.App. 783, 792, 98 P.3d 1264 (2004).

[81] *Perry*, 123 Wn.App. at 792, 98 P.3d 1264.

[82] *Northwest Properties Brokers Network, Inc. v. Early Dawn Estates Homeowner's Ass'n*, 295 P.3d 314, 320 (Feb. 20, 2013). *See also Sorenson v. Pyeatt*, 158 Wn.2d 523, 531, 146 P.3d 1172 (2006); *Kucera v. Dep't of Transp.*, 140 Wn.2d 200, 209, 995 P.2d 63 (2000); *Steury v. Johnson*, 90 Wn.App. 401, 405, 957 P.2d 772 (1998); *Rabey v. Dep't of Labor & Indus.*, 101 Wn.App. 390, 397, 3 P.3d 217 (2000), *review dismissed*, (No. 70030-3 May 8, 2001).

[83] *Pederson's Fryer Farms, Inc. v. Transamerica Ins. Co.*, 83 Wn.App. 432, 454, 922 P.2d 126 (1996).

intent."[84] When a contract's language is clear on its face, there is no need to look any further to ascertain its meaning.[85] But whenever there is a legitimate dispute over the meaning of a contract, it is the court's duty to ascertain the intent of the parties and interpret and construe the contract accordingly.[86] Under *Berg v. Hudesman* and its progeny, extrinsic evidence may be relevant in discerning that intent, where the evidence gives meaning to words used in the contract.[87] Accordingly, this Court recently held that "'if the easement is ambiguous or even silent on some points, the rules of construction call for examination of the situation of the property, the parties, and surrounding circumstances.'"[88]

The language in the statutory warranty deed from Mr. McCrory

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[84] *Tanner Elec. Coop. v. Puget Sound Power & Light Co.*, 128 Wn.2d 656, 674, 911 P.2d 1301 (1996).

[85] *McDonald v. State Farm Fire & Cas. Co.*, 119 Wn.2d 724, 733-34, 837 P.2d 1000 (1992).

[86] *Dice v. City of Montesano*, 131 Wn. App. 675, 683-84, 128 P.3d 1253 (2006), *review denied*, 158 Wn. 2d 1017, 149 P.3d 377 (2006) (court reviewed employment contract finding city employee entitled to severance pay in suit against city for termination without cause); *Bort v. Parker*, 110 Wn. App. 561, 573, 42 P.3d 980 (2002) (genuine issues of material fact existed as to whether or not construction company was intended party to the contract); *Hall v. Custom Craft Fixtures, Inc.*, 87 Wn. App. 1, 10, 937 P.2d 1143 (1997), as amended on denial of reconsideration, (summary judgment was improper where ambiguity in crucial documents could lead to more than one interpretation of the parties' intent).

[87] *Nationwide Mut. Fire Ins. Co. v. Watson*, 120 Wn.2d 178, 189, 840 P.2d 851 (1992) (extrinsic evidence illuminates what was written, not what was intended to be written).

[88] *Northwest Properties Brokers Network, Inc. v. Early Dawn Estates Homeowner's Ass'n*, 295 P.3d 314, 321 -322 (Feb. 20, 2013) (quoting *Colwell v. Etzell*, 119 Wn.App. 432, 439, 81 P.3d 895 (2003) (alteration in original) (quoting *Rupert v. Gunter*, 31 Wn.App. 27, 31, 640 P.2d 36 (1982)).

to the Bonnetts states that "[t]he relocated easement shall equal the "as built" dimensions and location of the road to be constructed and in use by June 15, 2004." It does not state that "[t]he relocated *portion of the* easement shall be equal to the "as built: dimensions and location of the road to be constructed and in use by June 15, 2014," which is how Plattner wants to read it. As stated above, the Bonnetts understood the language to refer to the entire easement.[89] And, contrary to Plattner's argument, Mr. McCrory offered no testimony that he did not want to change the width of the original 30-foot road easement – indeed, this would have been contrary to the language of the road relocation agreement, which plainly contemplated that the width of at least a portion of the road easement would be reduced to its "as-built" dimensions. Rather, Mr. McCrory testified that he didn't know what the "as built" language meant but understood that he would still have the access he needed to cross the Bonnetts' property to get to Lot 2.[90] Given that he testified that the original eight to ten-foot road was sufficient for such access,[91] his testimony can hardly be construed to support Plattner's claim that Mr. McCrory wanted to

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[89] RP 476-77.

[90] RP 409, 412. Plattner makes much of what Mr. Bayley, Mr. McCrory's attorney testified to, but he was not a party to the agreement. Notably, Mr. Bayley never spoke with the Bonnetts.

[91] RP 410.

maintain a 30-foot easement.

Nevertheless, the Bonnetts will concede that the language in the statutory warranty deed is potentially ambiguous, as demonstrated by the fact that the issue went to trial. Here, the trial court looked at all of the evidence and determined that the easement was no longer 30 feet and applied equity to establish its boundaries.[92]

Finally, if nothing else is certain in this case, it is that the trial court spent extensive time and effort reviewing the evidence and argument before it in order to ensure an equitable result. The trial court's decision to quiet title to the easement so that it reflected the facts on the ground as well as ensure sufficient access for large vehicles was eminently reasonable under the circumstances. This is particular true since the language in the statutory warranty deed

C. The Bonnetts' alleged obstruction of the easement did not constitute a nuisance.

"Nuisance is 'a substantial and unreasonable interference with the use and enjoyment of land.' "[93] "Nuisance consists in unlawfully

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[92] Plattner relies on FF 5 to support his argument that only the relocated portion of the road was subject to as-built dimensions. But FF 5 only states that the relocated portion of the easement was subject to the as-built language. It does not state that the remainder of the easement was *not* subject to the as-built language. Indeed, if the trial court had believed this, it presumably would not have altered the dimensions of the non-relocated portion.

[93] *Grundy v. Thurston County*, 155 Wn.2d 1, 6, 117 P.3d 1089 (2005) (quoting *Bodin v. City of Stanwood*, 79 Wn.App. 313, 318 n. 2, 901 P.2d 1065 (1995) (quoting 1 William H. Rodgers, *Environmental Law* § 2.2, at 33 (1986))).

doing an act, or omitting to perform a duty, which act or omission either annoys, injures or endangers the comfort, repose, health or safety of others ... or in any way renders other persons insecure in life, or in the use of property."[94] The essence of a nuisance action "is whether the use to which the property is put is reasonable or unreasonable."[95]

The crux of Plattner's argument is this: the easement is 30 feet, and therefore the Bonnetts could not put or do anything with the 30 feet. Accordingly, the Bonnetts were not allowed to park their boat, place a shed, or do anything else within the 30 feet. But even if the road easement was 30 feet, Plattner is simply wrong on the law. The owner of a servient estate has the right to use his land for any purpose not inconsistent with its ultimate use for reserved easement purposes.[96] Here, the area where the boat, trailer, and shed were located off of the actual paved road in an area created for staging during the Bonnetts' construction of their home. Moreover, the Bonnetts removed their boat and shed shortly after Plattner started complaining.[97] The only "obstructions" that remained by the time of

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[94] RCW 7.48.120.

[95] *Morin v. Johnson,* 49 Wn.2d 275, 280, 300 P.2d 569 (1956).

[96] *Beebe v. Swerda,* 58 Wn.App. 375, 384, 793 P.2d 442 (1990); Clwell v. Etzell 119 Wn.App. 432, 439, 81 P.3d 895, 898 (2003).

[97] RP 513-19, 613-14.

trial were a handful of metal stakes placed along the edge of the pavement to prevent further damage,[98] and not a single witness testified that she or he was prevented from accessing Plattner's property due to these stakes. Finally, it is undisputed that the Bonnetts' split rail fence was constructed on the property line and outside of the 30-foot easement that Plattner claimed at trial. In sum, there was no permanent physical obstruction of Plattner's property or easement.

It is true that while the trial court explicitly found that there was no nuisance, it did nevertheless order removal or relocation of the split rail fence and removal of any remaining metal stakes. But Plattner alleged other causes of action under which the trial court could grant this equitable relief, including interference with an easement. Tellingly, Plattner fails to cite to a single opinion that supports his proposition that a temporary obstruction can create a nuisance. While the *810 Properties v. Jump*[99] decision involved obstructions in an easement, it trial court ordered their removal under a claim for interference with an easement, not nuisance.[100] Moreover, this issue was not before the

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[98] RP 507.

[99] 141Wn. App. 688, 170 P. 3d 1209 (2007).

[100] *Id.* at 695.

Court of Appeals, so the trial court ruling has no precedential value in any event.[101]

In sum, the trial court's findings are well-supported by substantial evidence, and these findings in turn support the trial court's conclusion that Plattner's nuisance action was not sustainable.

D. Plattner cannot sustain a claim under RCW 4.24.630.

Washington's "waste" statute, RCW 4.24.630, prohibits the wrongful entry onto another's property for the purpose of causing injury to improvements on that property:

> Every person who goes onto the land of another and who removes timber, crops, minerals, or other similar valuable property from the land, or wrongfully causes waste or injury to the land, or wrongfully injures personal property or improvements to real estate on the land, is liable to the injured party for treble the amount of the damages caused by the removal, waste, or injury. For purposes of this section, a person acts "wrongfully" if the person intentionally and unreasonably commits the act or acts while knowing, or having reason to know, that he or she lacks authorization to so act. Damages recoverable under this section include, but are not limited to, damages for the market value of the property removed or injured, and for injury to the land, including the costs of restoration. In addition, the person is liable for reimbursing the injured party for the party's reasonable costs, including but not limited to investigative costs and reasonable attorneys' fees and other litigation-related costs.[102]

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[101] *Id.*

[102] RCW 4.24.630.

Hence, RCW 4.24.630 requires intentional conduct in all instances.[103] Accordingly, it order to sustain a claim under RCW 4.24.630, Plattner bore the burden of proving that Mr. Bonnett entered onto Plattner's property and intentionally damaged Plattner's video camera. Weighing the evidence before it – primarily, the video showing that it was directed at the Bonnetts' property before being directed the other way – the trial court reasonably found that Mr. Bonnett did not set out to damage the camera, merely to redirect it, due to his frustration at being videotaped.[104] Notably, Plattner does not contest the trial court's finding that there was no justification for his videotaping the Bonnetts' comings and goings.[105] Overall, Plattner fails to meet his burden of proving that the trial court's finding was not supported by substantial evidence.

E. The trial court properly ordered removal of Plattner's gate, including its posts.

As a general rule, a servient owner may not unreasonably

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[103] *Clipse v. Michels Pipeline Const., Inc.* 154 Wn.App. 573, 580, 225 P.3d 492, 495 (2010) ("intentional conduct is a necessary element of an action under RCW 4.24.630, not one of two alternative bases for liability"); *Borden v. City of Olympia,* 14 Wn. App. 359, 374, 53 P. 3d 1020 (2010) ("By [RCW 4.24.630's] plain terms, a claimant must show that the defendant 'wrongfully' caused waste or injury to land, and a defendant acts 'wrongfully' only if he or she acts 'intentionally.' ")

[104] FF 23.

[105] FF 22.

interfere with a dominant owner's use of an easement.[106] As such, a servient owner may not place a gate across an easement unless the parties intended for gates at the time the easement was created:

> Whether or not the owner of land, over which an easement exists, may erect and maintain fences, bars, or gates across or along an easement way, depends upon the intention of the parties connected with the original creation of the easement, as shown by the circumstances of the case; the nature and situation of the property subject to the easement; and the manner in which the way has been used and occupied.[107]

If the easement does not speak to gates, then the servient owner may not build a gate unless the servient estate is being subjected to a greater burden than the parties originally intended:

> When the owner of a servient estate is being subjected to a greater burden than that originally contemplated by the easement grant, the servient owner has the right to restrict such use and to maintain gates in a reasonable fashion necessary for his protection, as long as such gates do not unreasonably interfere with the dominant owner's use.[108]

Here, Plattner does not dispute the trial court's finding that the farm gate constituted unreasonable interference with the Bonnetts' use and enjoyment of their easement. Rather, he insists that he

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[106] *Rupert v. Gunter*, 31 Wn. App. 27, 30-31, 640 P.2d 36 (1982); see 25 *Am. Jur. 2d* § 86 (A servient owner "is required to refrain from unlawfully interfering with or obstructing the easement.").

[107] *Evich v. Kovacevich*, 33 Wn.2d 151, 162, 204 P.2d 839 (1949).

[108] *Rupert*, 31 Wn. App. at 31 (citing *United States v. Johnson*, 4 F.Supp. 77 (W.D.Wash. 1933)).

should be able to retain the fence posts, since the Bonnetts requested only removal of the "gate" as part of their relief and opposed to "gate posts" and therefore the trial court somehow violated his "due process" rights. But posts are part of the farm gate – indeed, it would be quite impossible to have the gate without posts, as it is free-standing. And Plattner failed to present any argument at trial as to why he should be allowed to retain the posts associated with the gate, even though he was well aware that the Bonnetts were asking the judge to order the gate removed. Rather, he raised his present argument for the first time in post-trial proceedings.[109]

When viewing the totality of his actions, Plattner's desire to keep the southernmost gate post appears to be motivated solely by his desire to continue to aggravate and annoy the Bonnetts, including by posting only his house numbers on the post closest to the Bonnetts' property and thereby continuing the confusion for visitors. The trial court recognized his post-trial protestations and intentions for what they were and properly included the post as part of the farm gate removal.

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[109] CP 208 (Plattner arguing that the gate posts "were not the subject of pleadings, nor were they the subject of testimony. No evidence whatsoever was admitted at trial about the posts.")

F. There is no legal basis for Plattner to recover attorney fees.

Under Washington law, "a court has no power to award attorney fees as a cost of litigation in the absence of contract, statute, or recognized ground of equity providing for fee recovery."[110] Plattner claims that he is entitled to attorney fees on the basis of two statutes: RCW 4.24.630(1), which contains an explicit attorney-fee provision, and RCW 7.48.010, which provides a plaintiff who prevails on a nuisance claim is entitled to "damages and other and further relief."

The fundamental flaw with Plattner's argument is, of course, that the trial court found that he did not prevail under either his RCW 4.24.630(1) or RCW 7.48.010 claim. Moreover, RCW 7.48.010 does not contain an attorney-fee provision. Tellingly, Plaintiff has provided no legal support for the notion that the statutory reference to "other and further relief" encompasses attorney fees. And the Bonnetts can find none.

IV. CONCLUSION

The trial court's factual findings challenged by Plattner are well supported by the evidence before the trial court. Moreover, the trial court's decision on the parties' quiet title actions was supported by tenable grounds and reasons given the evidence before it; it also

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[110] *Dayton v. Farmers Ins. Group*, 123, Wn. 2d 277, 280, 876 P. 2d 896 (1994). *Burns v. McClinton*, 135 Wn. App. 285, 143 P.3d 630 (2006); *Norris v. Church & Co., Inc.*, 115 Wn. App. 511, 63 P.3d 153 (2002).

reflected a reasonable interpretation of the intent of the parties' to the road easement. Accordingly, the trial court's rulings should be affirmed.

Dated this 30th day of April 2013.

Respectfully submitted,

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CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on this 30th day of April 2013, I did serve via email and first-class mail, a true and correct copy of the foregoing by addressing and directing for delivery to the following:

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